

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 02-79
Table of Allotments,)	RM-10424
FM Broadcast Stations.)	
(Park City, Montana))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: February 4, 2004**Released: February 9, 2004**

By the Assistant Chief, Audio Division:

1. In response to a petition filed by Chaparral Broadcasting, Inc. ("Petitioner"), licensee of FM Station KLZY, Channel 223C, Powell, Wyoming, the Audio Division has before it for consideration the *Notice of Proposed Rulemaking*¹ proposing several changes in the FM Table of Allotments.² Petitioner's request was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment. The *Notice* proposes to substitute Channel 223C0 for Channel 223C and to change the community of license from Powell, Wyoming, to Park City, Montana. In order to permit that change of community, the *Notice* proposes to substitute Channel 222C for Channel 223C at Miles City, Montana, and to modify the license for FM Station KKRY to specify operation on Channel 222C. Finally, the *Notice* proposes to allot Channel 221C at Byron, Wyoming.

2. Petitioner filed comments supporting the changes proposed in the *Notice*. Petitioner stated in both its petition and its comments that if the proposed allotments are adopted, Petitioner will: (a) promptly apply for a construction permit to implement the changes in the license for FM Station KLZY, *i.e.*, the change of city of license to Park City, Montana, and the change to Channel 223C0; (b) apply for a license for a new FM station on Channel 221C at Byron, Wyoming, when a filing window for that channel is opened; and (c) reimburse the licensee of FM Station KKRY for its reasonable costs of changing its channel of operation to Channel 222C.

3. Senger Broadcasting Corporation ("Senger"), licensee of FM Station KKRY, Miles City, Montana, also submitted comments in this proceeding.³ Senger does not object to the relocation of KLZY

¹ *Park City and Miles City, Montana, and Powell and Byron, Wyoming*, 17 FCC Rcd 7234 (2003).

² See 47 C.F.R. § 73.202(b).

³ Senger captioned its pleading, "Comments and Counterproposal," but we are treating it as comments rather than a

from Powell to Park City, but does object to the proposed change in KKRY's frequency from Channel 223C to 222C. Senger proposes changes in the reference coordinates for Station KLZY at Park City in order to avoid the necessity of KKRY changing from Channel 223C to 222C.⁴

4. In its reply comments, petitioner states that its proposed reference coordinates are preferable, for practical reasons, to those proposed by Senger. Petitioner states that its proposed reference point is already a developed transmitter site with existing towers, whereas the reference point proposed by Senger is located in an entirely undeveloped area which is 840 feet lower than the reference point proposed by petitioner. Petitioner further represents that, according to its engineering consultant, the site proposed by Senger would require an 1100 foot tower in order to achieve an antenna height above average terrain of at least 300 meters, the minimum for Class C0 facilities. Moreover, petitioner explains, the FAA may not authorize such a tall tower at Senger's proposed site, which is within 700 meters of Interstate 90, a major highway.⁵ Finally, petitioner states that the cost of erecting an 1100 foot tower would render it economically infeasible to proceed, and petitioner would not proceed with the relocation of KLZY to Park City at the alternate reference coordinates proposed by Senger.

5. In comparing Senger's proposed alternate coordinates at Park City with the coordinates originally proposed by petitioner, our engineering analysis has verified petitioner's representation regarding the differences in elevation between the two proposed sites. Commission engineers also have verified that the reference coordinates proposed by petitioner correspond to a developed transmitter site with existing towers. Petitioner has stated that it will reimburse Senger for the expenses associated with moving from Channel 223C to Channel 222C at Miles City, and Senger has not demonstrated any special circumstances that would render such a move unreasonable. Considering all of these circumstances, we conclude that petitioner's proposed site is preferable to the alternative site suggested by Senger. We therefore shall compare the existing allotment with the proposal set forth in the Notice in considering petitioner's requested change of community.

6. In determining whether to approve a change of community, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁶ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

7. Adoption of the proposals described in the *Notice* will not result in any white or gray areas (priorities one and two under the Commission's allotment priorities). The proposed change of community

counterproposal because Senger does not, in fact, propose any change to the FM Table of Allotments.

⁴ Senger proposes reference coordinates of 45-36-24 NL and 109-08-23 WL, rather than the coordinates proposed in the Notice: 45-32-24 NL and 108-38-34 WL.

⁵ Petitioner states that pilots operating under visual flight rules often use major highways as landmarks, and therefore the FAA is reluctant to approve towers over 500 feet that are located adjacent to major highways.

⁶ 90 FCC 2d 88 (1982), *recon. denied*, 56 RR 2d 448 (1983).

will provide Park City with a first local aural service, whereas the current allotment provides Powell with a third local aural service.⁷ Retention of Channel 223C at Powell thus would satisfy only the fourth priority, other public interest matters, but allotment of Channel 223C0 at Park City satisfies the third allotment priority, first local service.

8. Deletion of Channel 223C at Powell, Wyoming, would produce a loss area of 20,681 square kilometers with a population of 28,311 persons. Within that area, 3,149 persons in an area of 8,562 square kilometers would be left with two aural services, 11,976 persons in an area of 6,620 square kilometers would be left with three aural services, and 2,954 persons in an area of 3,717 square kilometers would be left with four aural services. The remainder of the loss area and population would continue to receive five or more aural services.

9. Allotment of Channel 223C0 at the reference coordinates proposed by petitioner would produce a gain area of 17,778.8 square kilometers with a population of 148,174. Within that area, an unpopulated area of 471.7 square kilometers would receive a first aural service, a population of 4,938 persons in an area of 2,413 square kilometers would receive a second aural service, an unpopulated area of 831.9 square kilometers would receive a third aural service, and an unpopulated area of 4.0 square kilometers would receive a fourth aural service. The remainder of the gain area and population currently receive five or more aural services. The proposal to delete Channel 223C at Powell, Wyoming, and allot Channel 223C0 at Park City, Montana, thus would result in a net loss of 2,902.2 square kilometers and a net gain of 119,863 persons served.

10. We recognize that proposed allotment at Park City would provide a 70 dBu signal over 100 percent of the Billings, Montana Urbanized Area. In such circumstances, we do not blindly apply a first local service preference; rather, we determine whether to apply a local service preference after evaluating the independence of the proposed community, based upon existing precedent.⁸

11. In *Tuck*, the Commission specified the following three factors for evaluating a community's independence: (1) signal population coverage, *i.e.*, the degree to which the proposed station will provide service to both the suburban community and the larger metropolis; (2) the size and proximity of the suburban community relative to the metropolis; and (3) the interdependence of the suburban community with the metropolis. Of these three factors, the most significant is the third.⁹ Petitioner acknowledges the applicability of *Tuck* and provides an analysis to establish that Park City is an independent community rather than an appendage of Billings.

⁷ There is one other commercial FM Station licensed to Powell, FM Station KCGL, Channel 281C, and an AM Station, KPOW-AM.

⁸ See, e.g., *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C.Cir. 1951) ("*Huntington*"); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*").

⁹ *Tuck*, *supra*. See also *Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama*, 6 FCC Rcd 6,580 ¶23 (M.M.Bur. 1991), *app. for rev. dismissed*, 12 FCC Rcd 8392 (M.M.Bur. 1997).

12. As to the first factor, the proposed station will provide service to the entire Billings, Montana Urbanized Area as well as to the allotment community. Addressing the relative sizes of Park City and Billings, petitioner states that the population of Park City was 870, according to the 2000 U.S. Census, and that the population of Billings is 89,847. The population of Park City thus represents approximately 0.97 percent of the population of Billings. Although Park City obviously is much smaller than Billings, the Commission has granted change of community requests in cases involving similar disparities between the size of the population of the proposed community and that of the central city of an urbanized area.¹⁰ Moreover, FM stations have been allotted to numerous communities the size of Park City or smaller. Neither the extent of signal coverage, nor the relative size of Park City and Billings, precludes a finding that Park City is an independent community for allotment purposes. As to the distance between the two communities, petitioner states that the Park City, is located approximately 21 miles southwest of Billings, in a different county.¹¹ The distance between the two communities thus provides support for a finding that Park City is independent of Billings.

13. Turning to the most important consideration, the interdependence of the proposed community with the primary city in the urbanized area, we find that petitioner has established that Park City is an independent community, rather than dependent upon Billings for its existence. Although some residents of Park City work in Billings, petitioner represents that many Park City residents own or are employed by local commercial businesses, or work as teachers or administrators of the local public school. In addition, petitioner states that Park City is located in an agricultural area and, therefore, many of the residents of Park City are involved in agricultural occupations in the surrounding rural area.

14. Park City has its own independent school district providing education for kindergarten through twelfth grade students. Park City has its own locally-elected school board, and all of the board members are residents of Park City. Park City also is served by a local sewer and water district administered by a locally-elected board. Fire protection is provided by a local volunteer fire department, and police services are provided by the Stillwater County Sheriff's Department.

15. Park City has two churches and more than a dozen businesses, at least two of which include "Park City" in their business name. There are no health care facilities in Park City, although health care services are available to the residents of Park City at the Stillwater Community Hospital, located in the nearby community of Stillwater.

16. Park City is in Montana House District 24, which does not include Billings, and the elected representative from that district is a resident of Park City. Petitioner states that leaders and other residents of Park City do not see Park City as an appendage of Billings. Moreover, petitioner states, the city with which Park City has the closest connections is Columbus, the County Seat of Stillwater County and the center for governmental services provided by Stillwater County to Park City.

¹⁰ See, e.g., *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (M.M.Bur. 1996) (Newcastle had population equal to 0.9 percent of Oklahoma City).

¹¹ Park City is in Stillwater County, and Billings is in Yellowstone County.

17. For all of the foregoing reasons, we conclude that the public interest would be served by substituting Channel 223C0 for Channel 223C at Powell, Wyoming, reallocating Channel 223C0 at Park City, Montana, substituting Channel 222C for Channel 223C at Miles City, Montana, and adding Channel 221C at Byron, Wyoming. Channel 222C can be substituted for Channel 223C at Miles City without a site change. After Channel 222C is substituted for Channel 223C at Miles City, Montana, Channel 223C0 can be allotted to Park City in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 23.8 kilometers (14.8 miles) southeast of Park City at reference coordinates of 45-32-24 NL and 108-38-34 WL. Channel 221C can be allotted to Byron, Wyoming with a site restriction of 44.7 kilometers (27.7 miles) southwest of Byron, at reference coordinates of 44-38-08 NL and 109-01-20 WL.

18. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b), 0.283, and 1.420(i) of the Commission's Rules, IT IS ORDERED, That effective March 25, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED as follows:

<u>Community</u>	<u>Channel Number</u>
Miles City, Montana	222C
Park City, Montana	223C
Byron, Wyoming	221C
Powell, Wyoming	281C

19. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Chaparral Broadcasting, Inc., for FM Station KLZY, IS MODIFIED to specify operation on Channel 223C0 at Park City, Montana, subject to the following conditions:

(a) Within 90 days of the effective date of the Order, the licensee of FM Station KLZY shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

20. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Senger Broadcasting Company, for FM Station KKRY, IS MODIFIED to specify operation on Channel 222C at Miles City, Montana, subject to the following conditions:

(a) Within 90 days of the effective date of the Order, the licensee of FM Station KKRY shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

21. Pursuant to Commission Rule Section 1.1104(1)(k) and (3)(l), any party seeking a change in community of license of a TV or FM allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Chaparral Broadcasting, Inc., licensee of FM Station KLZY, is required to submit a rule making fee in addition to the fee required for the applications to effectuate the changes specified above.

22. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this Order to the following:

David Tillotson, Esq.
Law Offices of David Tillotson
4606 Charleston Terrace, N.W.
Washington, D.C. 20007-1911

Matthew H. McCormick, Esq.
Reddy, Begley & McCormick, LLP
2175 K Street, N.W., Suite 350
Washington, D.C. 20037-1845

23. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

24. For further information concerning this proceeding, contact Deborah Dupont, Media Bureau, (202) 418-7072.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau